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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,637	09/27/2003	Charles S. Moyher	CM-1-gw	8091

7590
01/03/2006
Michael I. Kroll
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EXAMINER

SAFAVI, MICHAEL

ART UNIT PAPER NUMBER

3673

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/672,637

Applicant(s)

MOYHER, CHARLES S.

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/27/03</u> . | 6) <input type="checkbox"/> Other: ____. |

Information Disclosure Statement

The information disclosure statement filed September 27, 2003 fails to fully comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the reference listed as U.S. Patent No. 5,390,050 does not appear issued to Jacobus. It has been placed in the application file, but the information referred to therein with respect to U.S. Patent No. 5,390,050, has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "cross-vent connecting each of said cavities in each of said pair of conduits", (claim 5), must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

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is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 17, to which cavity does "said cavity" refer? Otherwise, it is not clear as to what "said cavity" defines.

Claim 4, line 2, to which cavity does "said cavity of each of said pair of conduits" refer? Otherwise, it is not clear as to what "said cavity of each of said pair of conduits" defines.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by

Trovato. As for **claims 1 and 2**, Trovato discloses, Fig. 6, a pair of conduit sections 1E, 1I, said conduit sections being spaced apart to receive concrete thereinbetween, said concrete forming the footer of the foundation of the building, each of said conduit sections being rectangular shaped having a pair of longer sides and a shorter top and bottom, said sides being substantially vertically disposed, wherein each of said conduit sections has a cavity therein, wherein each of said conduit sections has first and second opposing ends and a wall; wherein a plurality of pairs of conduit sections are each joined end to end, (as by male and female joints 5), to form a pair of conduits extending along both sides of the entire foundation footing of the building; at least one strap, (upper 6), connecting said pairs of conduit sections to permit the conduits to be held together when concrete is placed thereinbetween; at least one spreader, (lower 6), rigidly connecting said pairs of conduit sections to permit the conduits to be held apart

when concrete is placed thereinbetween; and, wherein at least one air vent 11 is disposed in each of said pair of conduits to permit air to be vented from said cavity to the atmosphere.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trovato in view of Johnson et al.

Johnson et al. teaches, Fig. 4, utilization of corrugated foundation conduit sections. To have formed the Trovato form conduit sections of a corrugated fashion, thus providing a sturdy and durable conduit form assembly, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Johnson et al.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trovato in view of Johnson et al. as applied to claims 3 and 4 above, and further in view of Hughes, Jr.

Hughes, Jr. discloses a cross conduit in the form of a cross drain/vent 27 if desired to allow for passage of fluid from one form vent to another. Therefore, to have

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provided the modified Trovato form vent assembly with at least one cross-vent connecting each of said cavities in each of said pair of conduits to permit air to be drawn from the first conduit to the second conduit when so desired, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Hughes, Jr.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trovato in view of Johnson et al. and Hughes, Jr. as applied to claim 5 above, and further in view of U.S. Patent publication 2003/0200707 to Parker.

Parker '707 discloses utilization of flexible ties and braces 360, 420 to hold form vents/conduits in position. Therefore, to have provided the modified Trovato form vent assembly with any of a plurality of flexible straps or ties as well as rigid metal rods, thus allowing for both holding and spacing of the form vent modules, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Parker '707.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.



M. Safavi
December 22, 2005

MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 3673